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15 SEPTEMBER 2020

Sovereign Immunity of States in Dismissal Disputes

The United States of America v Menteri Sumber Manusia Malaysia & Ors [2020] 7 CLJ 210

The High Court, in a recent judgment, held that the United States of America (**US**) and her embassy in Kuala Lumpur (**Embassy**) are immune from the jurisdiction of the Industrial Court in respect of a representation filed by a former security guard of the Embassy that he was dismissed without just cause or excuse.

The employee was dismissed in 2008. He subsequently filed a representation against the Embassy under s 20 of the Industrial Relations Act 1967. After an 11-year delay, the Minister of Human Resources (**Minister**) decided to refer the employee's representation to the Industrial Court for adjudication.

As the Embassy is not itself a legal entity, the US considered the employee's representation as one directed at the US, which enjoys sovereign immunity. The US accordingly filed a judicial review application to challenge the Minister's decision.

The principal question was whether the US and her Embassy were immune from the jurisdiction of the Industrial Court. On this question, the High Court held as follows:

- (a) Malaysian law recognises the restrictive doctrine of sovereign immunity under which a State is immune from the jurisdiction of courts in respect of acts which are done in the exercise of its sovereign authority;
- (b) The restrictive doctrine of sovereign immunity applied in the present case as: (i) the employee, being involved in the security of the Embassy, performed governmental and sovereign functions of the US; and (ii) his duties were integral to the sovereign activity of the US and her Embassy, not only

to provide security but also to maintain the inviolability of the Embassy's premises; and

- (c) The Industrial Court therefore had no jurisdiction to adjudicate upon the employee's representation.

The High Court also held as follows regarding the Minister's lengthy delay in referring the employee's representation to the Industrial Court:

- (a) Although s 20 of the Industrial Relations Act 1967 does not specify the time period for a representation to be referred to the Industrial Court, the 11-year delay was inordinate and unexplained; and
- (b) Such unexplained delay on the Minister's part would prejudice the US if the employee's representation was to be adjudicated by the Industrial Court.

The High Court proceeded to allow the judicial review application to quash the Minister's decision and to prohibit the Industrial Court from adjudicating upon the employee's representation. The High Court also granted a declaration that the US and her Embassy are immune from the jurisdiction of the Industrial Court in respect of the employee's representation.

This decision of the High Court is now pending appeal in the Court of Appeal.

The US was represented by partner Lim Heng Seng and senior associate Amardeep Singh Toor, with the assistance of associate Alycia Tan Wei Wenn, of [Lee Hishammuddin Allen & Gledhill](#).

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Published by the Employment & Industrial Relations Practice

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